

# China's Regulatory Environment for Games

**This is a Chinnovation Ltd report commissioned by Neogames Ltd,  
subcontracted to Fortune High Intellectual Property**

August 2015

## Disclaimer

Please, notice that the information of this report is intended to provide general information and all reasonable measures have been taken to ensure that the information is accurate. The contents of this report should not be construed as legal advice. Before relying on any information in this report users should independently verify its relevance for their purposes.



## Table of Contents

### Chapter one: Current legal environment in China

1. General situation of Chinese legal environment for games .....	3
2. Main legislative achievements relating to games .....	3
2.1 Macroscopic industrial policies .....	3
2.2 Online game operation.....	7
2.3 Internet information and network security.....	10
2.4 Software products .....	13
2.5 Venues of the game-play .....	15
Chapter two: Government Supervision .....	17
1. Main supervisors and their roles .....	17
1.1 National Copyright Administration .....	17
1.2 The State Administration of Press, Publication, Radio, Film and Television - SARFT, (former General Administration of Press and Publication - GAPP) .....	19
1.3 The Ministry of Culture.....	19
2 . Administrative approval system.....	21
Chapter three: Factors affecting the legislation for games .....	23
1. The relation between the legislation of online game industry and the national plan for informatisation .....	23
2. The relation between industrial chain and investment direction.....	24
3. The relation between value orientation and growth of consumer market .....	24
4. Relation between fairness and the balance of interests .....	24
Chapter four: Effective prevention of legal risks .....	26
1. Civil legal risks, including intellectual property protection and common civil disputations.....	26
1.1 Copyright.....	26
1.2 Trademark .....	28
1.3 Patent.....	28
1.4 Game development and publishing .....	29
1.5 Confidentiality of user personal information .....	31
1.6 Legal Analysis on the sales and pricing issues related to games.....	32
1.7 Warning to consumers.....	33
1.8 Game content and advertising .....	34
1.9 Jurisdiction .....	36
2. Criminal offenses .....	37
3. Administrative liabilities.....	37
4. Risks of foreign investment in games .....	38

## Chapter one: Current legal environment in China

### 1. General situation of Chinese legal environment for games

The development of China's regulatory laws and policies for games can be summarised into 2 key stages so far. The pre-year 2000 stage features the regulation of game publishing with the formulation of related policies; whereas the post-year 2000 stage moved the focus onto online games. During this period, the former General Administration of Press and Publication - GAPP and the Ministry of Culture have attached great importance to the supervision of the online games, which is considered as an essential part of the whole Internet industry.

Because of the late start of China's Internet industry, the development of the online game industry was also at the primary stage in the beginning. At first, the regulators' focus was on the increase of the industry's size, which was set as the step prior to regulating the sector. Holding this mind-set, the implemented policies were more in favour of a speedy growth of the industry, and loose on regulation.

However, as the industry gradually grows into shape, a regulatory system is being formed with more and specific regulations, along with the establishment or appointment of regulatory agencies. The speedy evolution of technology in online games has directly expanded the scope and increased the depth of supervision and administration of online games.

Though China has no specific legal provisions for mobile games, now that the majority of mobile games nowadays are both stand-alone and online games, the general laws and regulations for online games are considered to be applicable for mobile games.

### 2. Main legislative achievements relating to games

China's policies, as well as laws and regulations, both central and local, mainly cover the aspects of 1) macroscopic industrial policy; 2) game operation; 3) venue management; 4) network information and safety; and 5) software productsetc.

#### 2.1 Macroscopic industrial policies

1) March 2014, State Council's *Suggestions for Promotion of Cultural and Creative Design and Related Industrial Cohesion*, Guo Fa [2014] No. 10

The Suggestions propose to accelerate the development of digital industry as a key task, to explore quality resources of cultural products, and to push the optimisation and upgrading of the animation and game industries, branding domestic products.

2) August 2013, State Council's Suggestions on Expanding Domestic Demand and Consumption of Information Products and Service

The Suggestions put forward the need to 1) expand consumer demand; 2) diversify content of information consumption; 3) vigorously develop digital publishing, interactive new media, mobile media and other emerging cultural industries; and 4) promote consumption of animation, games, digital music, network art and other digital products.

3) May 2012, Ministry of Industry and Information Technology's *Twelfth Five-year Plan for Internet Industry*

The Plan points out that 1) as one of the greatest inventions of mankind in the 20th Century, Internet is gradually becoming a strategic infrastructure of the age of information for the development of human society; 2) China's Internet industry has become an important part of that of the world after many years of development. 3) the Internet has covered every field of the country's economy and society, and it has become a new platform and power of change for manufacturing, construction, trading, scientific and technological innovation, public service, cultural communication, and entertainment.

The Plan also presents the 6 major problems and contradictions, as well as the 7 objectives of the development and administration of the Internet industry during the Twelfth Five-year period.

4) April 2012, Ministry of Industry and Information Technology's *Twelfth Five-year Plan for Software and Information Service Industry*

The Plan summarises that

- a) the "11th Five-year" period saw China's software and information services continued rapid development, with an annual rate of increase of 28.3%, accompanied by the continuing expansion of the industry's scale.
- b) by 2015, the revenue of the software and information service industries would exceed 4 trillion Chinese yuan, accounting for 25% of the whole information sector, a 24.5% growth year on year, with a software export volume of US\$ 60 billion. Information services revenue would exceed 2.5 trillion Chinese yuan, a 60% proportion of revenue of the software and information services.

5) October 2011, CPC Central Committee's *Decision on Deepening the Reform of the Cultural System to Promote Cultural Development and Prosperity of Socialist China*

The Decision requires that

- a) "spiritual food", more in number and better in quality, to be provided to People;
- b) development of cultural industry to speed up;

- c) the cultural industry to be built a pillar industry of the national economy;
- d) the project of Internet content construction to be implemented;
- e) excellent traditional and contemporary cultural treasures to be disseminated;
- f) outstanding work suitable for the dissemination on Internet and mobile Internet to be provided;
- g) Chinese culture to be promoted to the world;
- h) the influence of the Chinese culture to be enhanced;
- i) cultural diversity to be maintained;
- j) the world's understanding of the basic realities of China including its values, path of development, and domestic and foreign policies to be strengthened;
- k) China's image as a civilised, democratic, open and advancing country to be showcased;
- l) cultural enterprises and NGOs from the private sectors to play a role in cultural dialogue with the world;
- m) overseas Chinese to actively carry out the undertaking of cultural communication between China and the world.

6) January 2011, State Council's *Notice concerning Issuing Policies for Further Encouraging Development of Software Industry and Integrated Circuit Industry* (Guo Fa [2011] No. 4 )

The Notice is an update of the State Council's *Notice concerning Issuing Several Policies on Encouraging the Development of Software Industry and the Integrated Circuit Industry* (Guo Fa [2000] No. 18).

The Notice provides a series of policies.

i) Fiscal and taxation

- a) Once certified, newly established enterprises in China for integrated circuit design and qualified enterprises for software, may enjoy the preferential taxation policy that exempts the enterprises of corporate income tax for 2 years from the first fiscal year when income is generated, and reduces to half such tax for the 3 years that follow;
- b) Favourable VAT policy for software business shall continue.

ii) Investment and financing

The state

- a) strongly supports the important projects for software and integrated circuit;
- b) encourages and supports software companies and integrated circuit enterprises to integrate industrial resources;
- c) allows policy-oriented financial institutions in the country to give special support to the integrated circuit and software projects that meet the criteria of "National Key Technology Projects".

iii) Other aspects

The Notice provides favourable policies also in the areas of R&D, import and export,

human resource, intellectual property, and market support. It is clarified that all the relevant software and integrated circuit enterprises, regardless of their nature of ownership, are eligible for the foregoing policies.

7) September 2009, State Council's *Plan for Boosting Cultural Industry*

The Plan is with the objectives to accelerate the revitalisation of the cultural industry; give full play to the cultural industry in respect of the national economic restructuring, expanding domestic demand, increasing employment, and promoting the advancement of the society;

The Plan identifies 8 areas where efforts are needed including the emerging formats of culture related business, such as the use of digital, Internet and other high-tech means for the cultural industry's upgrade;

It also supports the development of mobile multimedia, television, and digital multimedia;

The state encourages the development of 1) value-added services such as mobile cultural information service, and digital entertainment products, to provide content for a variety of portable devices; 2) audible paper books, e-books, mobile news and online publications etc.

8) Year 2008, State Council's *Notice concerning Issuing the National Intellectual Property Strategy*

Enterprises should benefit from policies related to finance, investment, government procurement, energy and environmental protection, to create and utilise intellectual property.

The Notice requests it to be treated as a special task to support patents of core technology, computer software copyright.

9) June 2000, State Council's *Notice concerning Issuing Policies to Encourage Development of Software Industry and Integrated Circuit Industry* (Guo Fa [2000] No. 18)

The Notice provides for the promotion of China's rapid development of information industry through policy guidance, as well as the introduction of capital and talents to the software and integrated circuit industries.

i) Investment and financing

Increase investment in the software industry, provide support for the software enterprises to go public in the domestic and foreign markets;

ii) Taxation support

- a) Once certified, newly established enterprises in China for integrated circuit design and qualified enterprises for software, may enjoy the preferential tax policy that exempts the enterprises of corporate income tax for 2 years from the first fiscal year when income is generated, and reduces to half such tax for the 3 years that follow;
- b) Incentive VAT tax policy for the software products

iii) Technology related support

The state supports

- a) the development of “major common software” and fundamental software;
- b) Chinese enterprises, scientific research institutes, universities to set up research and development centres in joint efforts with foreign companies.

iv) Other policy supports cover income distribution, talent enrolment and training, and procurement etc.

## 2.2 Online game operation

1) July 2011, General Administration of Press and Publications, CPC Office for Civilisation, Ministry of Education, Ministry of Public Security, Ministry of Industry and Information Technology, Communist Youth League, All-China Women’s Federation and China National Committee for the Wellbeing of the Youth jointly issued the *Notice concerning Real Name Authentication to Avoid Online Game Addiction*.

The Notice demands all government departments and organisations to bear the social responsibility of protecting the physical and mental health of the minors by implementing the real name authentication policy that covers all online games.

2) July 2010, Ministry of Culture’s *Guidance on Implementation of ‘Interim Measures for Administration of Online Game’*

The Guidance

- a) specifies the organisations and persons subject to the supervision and administration;
- b) standardises the procedure of administrative approvals;
- c) demands strengthened inspection on online game operation;
- d) requests strengthened administration of the content of online games by means of e-governance, legitimate disclosure of information, tightened supervision on the import and export of online games, standardised domestic online game products’ filing for record to the sector authority, and dynamic supervision over online games.

3) June 2010, Ministry of Culture’s *Interim Measures for Administration of Online Games* (Order of MoC No. 49, effective from 1 August 2010)

The Measures regulate all activities covered by the Measures including game development, production, operation, virtual currency management etc.

According to the Measure, organisations engaged in the online game business shall obtain the license from the authorities, receiving no objection from the public over the public announcement; ensure the games do not contain any contents prohibited by laws and regulations.

Article 6 of the Measure provides that in order to carry out virtual currency issuance and trading service, apart from acquiring the license, organisations shall a) have legitimate name, corporate address, and clear articles of corporation; b) have specified scope of business; c) employ staff that meet the criteria required by the state; d) be incorporated with a registered capital of no less than 10 million Chinese yuan; and f) meet other standards demanded by laws and regulations.

Article 19 of the Measures requests that: a) the virtual currency in games is allowed to be changed into nothing but the products or service of the game itself; b) the issuance of virtual currency for games shall not be intended to maliciously occupy the users' fund collected through the virtual currency's sales; c) the game operator should keep record of users' purchase for no fewer than 180 days from the day of their last purchase; d) the types, prices, total amount of the virtual currency's issuance shall be submitted for registration to the local authority in charge of cultural administration.

4) November 2009, Ministry of Culture's *Notice concerning the Improvement and Strengthening of Online Game Content Administration* (Wen Shi Fa [2009] No. 46)

Game operators shall establish self-discipline mechanism consisting of correct values, improved rules for game-play, improved structure of product lines, self-inspection, staff training and performance evaluation system.

Game operators shall improve the system of game content inspection, in hope of a more strengthened self-disciplinary mechanism of the sector and of the whole society.

5) September 2009, Former General Administration of Press and Publication, National Copyright Administration and National Office against Pornography and Illegal Publications jointly issued *Notice concerning Further Strengthening Pre-license Examination and Administration of the Approval of Imported Games*.

The Notice gives definition to "online games" and "imported online games". It also specifies that the online game operation belongs to strand of "online game publishing" now that it consists of online interaction of users and download service.

In the meantime, the Notice states that foreign investors shall not control or participate

in the operation of online games in China through setting up joint ventures, or indirectly control or participate in online games in China.

6) July 2009, Former General Administration of Press and Publication's *Notice concerning Strengthening Approval of Imported online games*

The Notice is meant to standardise the pre-license approvals, and the approval and inspection of games with copyright, the use of which is licensed by foreign owners. At the same time, the Notice is aimed at standardising trading of games at exhibitions.

7) June 2009, Ministry of Culture and Ministry of Commerce jointly issued *Notice concerning Strengthening Administration of Virtual Currency Used in Online Game (Wen Shi Fa [2009] No. 20)*.

The Notice

- a) requests strict control over access to market, and strengthened administration to the service provider regarding virtual currency used in games;
- b) clarifies that no companies can be operating 2 or over 2 businesses at the same time; and
- c) provides that information, such as the total amount of virtual currency's issuance used in games, shall be reported to local provincial administrative authority for culture each quarter of year.

8) April 2009, Ministry of Culture's *Announcement of Measures for the Standardisation of Imported Online Games' Approval*

The Announcement requests game operators to strictly follow the instructions of *Ministry of Culture's Notice concerning Strengthening Review on Content of Online Games (Wen Shi Fa [2004] No. 14)* when filing application for the imported online games to the sector authorities, and ensure all materials of the application are identical with those of the formal version of games.

9) April 2007, Ministry of Education, Ministry of Industry and Information Technology, former General Administration of Press and Publication, Ministry of Public Security jointly with another 4 state departments issued the *Notice concerning Implementation of Anti-addiction System of Online Games to Protect Minors' Physical and Mental Health*.

Such system shall take technical measures to limit minors' time spent on the online games. Online game operators shall develop such system and build it in games, following the "Development Standards of Anti-addiction System of Online Games". The operators shall strictly carry out the "Real Name Authentication" during operation.

10) February 2007, Ministry of Culture, People's Bank of China jointly with another 14 state departments issued *Notice concerning Further Strengthening Administration of Internet*

*Cafes and Online Games* (Wen Shi Fa [2007] No. 10).

The People's Bank of China shall

- a) strictly control the total amount of virtual currency issuance, as well as the limit on individual users' purchase of virtual currency;
- b) strictly see to it that the virtual currency is only used in the purchase of products and service within the game, and that it shall not be changed into any products or service out of the game.

When users sell their virtual currency for real currency, they shall receive no more than the amount they have previously spent on acquiring the virtual currency.

11) January 2007, Ministry of Public Security, former Ministry of Information Industry, Ministry of Culture jointly with former General Administration of Press and Publication issued *Notice concerning Strict Regulation on Online Game Operation and Prohibition of Gambling in Online Games*.

The Notice requests the regulation of online game operation and stringent banning of online games providing possibility for gambling.

12) July 2005, Ministry of Culture jointly with former Ministry of Information Industry issued *Suggestions regarding Development and Administration of Online Game Industry*.

The Suggestions analyse the current situation of China's online game market, and stress the support to the healthy development of the industry and the regulation of the market.

13) May 2004, Ministry of Culture's *Notice concerning Strengthening Approval of Online Game Content*

The Notice clarifies the Ministry of Culture has the responsibility and authority of approving foreign online games spread on Internet or mobile Internet. It then explains the materials and review procedures for the application and approval.

### **2.3 Internet information and network security**

1) February 2015, State Internet Information Office's *Regulations on Management of Internet Users' Account*

The Regulations took effect from 1 March 2015, aiming at regulating service and the use of user account, avatar, briefing etc covering a wide range of all the user accounts registered under and used on blogs, micro blogs, instant communication tools, forums etc.

2) June 2013, Ministry of Industry and Information Technology's *Regulations on Protection of User Information in Telecommunication Services and on Internet*

The provisions of the Regulations further improve the legal system for the protection of users' personal information. In addition, the regulations put forward rules and measures for telecommunication operators and Internet service providers to adopt to safeguard the collected personal information.

3) December 2012, *Decisions of the Standing Committee of the National People's Congress on the Strengthening of Internet Information Protection*

The Decisions provide the rules that shall be followed by Internet service providers and other organisations when collecting personal information online.

4) June 2012, State Council's *Suggestions on Vigorously Promoting Development of Information Technology and Effectively Protecting Information Security*

The Suggestions mainly showcase the "Broadband China" project, the objectives of which include

- a) construction of infrastructure,
- b) cohesion of industrialisation and informatisation,
- c) high-level informatisation in economic development across sectors,
- d) cultivation of advanced Internet culture,
- e) informatisation in agriculture and rural development,
- f) capacity building and benefiting farmer,
- g) information security management, especially that of key areas of the country, and
- h) improved policies for the sector.

5) December 2011, *Provisions of Ministry of Industry and Information Technology on Regulating Internet Service Market Order*

The Provisions

- a) clarify code of conduct, rules and conductal boundaries for Internet service;
- b) ban any violations of rights and interests of other service providers;
- c) standardise activities in the evaluation of online services;
- d) clarify the conducts that harm users' legitimate rights and interests;
- e) regulate the installation, pre-installation, and the running of software on terminal devices,
- f) regulate advertising with pop-up windows, and
- g) strengthen the protection of users' personal information.

6) February 2011, *Interim Provisions of Ministry of Culture on Administration of Internet Culture* (Order of MoC No. 51, Effective from 1 April 2011).

The Provisions further clarify the definition of Internet products, the process of approval of for-profit Internet enterprises, as well as the validity period of the License for Cultural Business on Internet.

7) March 2009, Ministry of Industry and Information Technology's *Measure for Administration of Telecommunication Business License Approval* (Order of MoIT No. 5)

The Measures discontinued the MoIT's "Measures of Administration of Telecommunication Business License Approval" enacted on 26 December 2001.

Telecommunication business operators shall obtain the business license in accordance with the law, and shall be cooperative with supervision as required by the provisions stated on the license.

The Measures also clarify that legitimate business activities in line with the provisions stated on the license shall be legally protected by the state.

8) November 2007, State Council's *Guidance on Internet Business Registration of For-profit Internet Enterprises*.

The Guidance clarifies the threshold, steps and time-line of the registration for Internet and cultural business, and the required materials needed for the said purpose.

9) May 2006, State Council's *Protective Provisions for the Rights of Internet Information Dissemination* (Order of State Council No. 468).

The Rules provide that the dissemination of a third party's work, videos or audios, by any organisations or individuals, must have obtained permission for use from the copyright owners, or paid compensation for unauthorised use of their work, unless otherwise specified by laws.

Copyright owners may take technical measures to protect their rights of online dissemination, unless otherwise specified by laws and regulations. Any organisations or individuals shall not maliciously break through or help others break through such protective technical measures, unless otherwise permitted by law.

10) June 2002, Former General Administration of Press and Publication jointly with former Ministry of Information Industry issued the *Interim Provisions on Administration of Internet Publications*.

The Provisions define 'Internet publication' as the publishing of work, either produced by the Internet service providers or others, on the Internet upon selection and adaptation, for the public to read, use or download.

The Provisions also specify the rights and obligations of Internet publishers.

11) December 2000, *Decisions on Safeguarding the Internet Security* issued by the Standing Committee of the National People's Congress

The Decisions standardise the conducts in maintaining Internet operational security, state and social security, socialist market economy and social order, as well as in the protection of the legitimate rights of individuals, legal persons and organisations.

The Decisions also define the conducts causing harm to the Internet security and punishment for such conducts.

12) September 2000, *State Council's Measures for Administration of Internet Information Service* (Order of State Council No. 292)

The Measures define "Internet information service" as the activities of providing information on Internet, and such service belongs to either of the for-profit and non-for-profit categories.

Internet information service providers shall obtain permission from the sector authority, and shall not disseminate any content prohibited by laws and administrative regulations.

13) September 2000, *State Council's Provisions for Telecommunication Sector of the People's Republic of China* (Order of State Council No. 291)

Aiming at regulating the telecommunication market order, the Provisions define "telecommunication" as the transmitting, sending and receiving of voice, text, data, image and any other forms of information using cable, wireless radio systems or radio and television systems.

Telecommunication business shall be classified into the basic and value-added services. On the basis of the Provisions, telecommunication business operators shall obtain a legitimate business license, and accept the supervision and administration exercised by the sector authorities under the State Council administration.

## **2.4 Software products**

1) April 2012, Ministry of Finance jointly with State Administration of Taxation issued the *Notice concerning Policy of Corporate Income Tax to Further Encourage Development of Software Industry and Integrated Circuit Industry* (Cai Shui [2012] No. 27).

In order to further promote technology innovation and the upgrade of industrial structure, as well as to promote the development of information technology industry,

adjustments are done to the policies of corporate income tax including:

Newly established enterprises for integrated circuit design as well as qualified software companies, once verified, can enjoy preferential taxation policy since the year when profit is first gained, but before 31 December 2017, which includes

- 1) tax exemption over the first 2 years; and
- 2) corporate income tax reduced to half from the third to the fifth year.

However, given that a company is still in the duration of the validity of the preferential conditions as provided in Article 1 of the “*Notice concerning Policies for Preferential Corporate Income Taxation*” jointly issued by the Ministry of Finance and the General Administration of Taxation (Cai Shui [2008] No. 1), and that such entitlement has been granted to the company before 31 December 2010, it may continue enjoying the said preferential conditions until the date of expiration for a previously decided length of validity.

- 2) March 2009, Ministry of Industry and Information Technology’s *Measures for Administration of Software Product* (Order of MollIT No. 9)

“Software product” is defined as the computer software; software embedded in the information systems or devices; software provided for the integration of computer information system and other technical services.

The Measures standardise the development, manufacturing, sales, import and export of software products. In accordance with the provisions of the Measures, domestic software products shall be registered, supervised and administered by the sector authority.

- 3) February 2002, National Copyright Administration’s *Measures for Computer Software Copyright Registration* (Order of NCA No. 1)

The scope of software registration includes registration of software copyright, and the contract for exclusive licensing and assignment. The applicant of software copyright shall be the owner of such copyright, or any natural person, legal person or organisation having the ownership through either inheritance or assignment.

- 4) December 2001, State Council’s *Provisions on Computer Software Protection* (Order of State Council No. 339)

Interest of copyright owners with Chinese citizenship is protected. Software developers own the copyright of the software, and have the right to license or assign such copyright to others.

- 5) November 2000, Ministry of Finance, General Administration of Taxation, General

Administration of Customs jointly issued *Notice concerning Taxation Policy for Promoting Development of Software Industry and Integrated Circuit Industry* (Cai Shui [2000] No. 25).

A series of new preferential policies for software industry are issued in this Notice: Where a software developer sells software developed by itself, any further amount paid as tax, when a tax valuing 3% of the developer's sales revenue has been paid (further amount paid as tax when the tax burden ratio has reached 3%), shall be refunded immediately upon paying.

Upon verification, new software enterprises are eligible to enjoy the policy that allows tax exemption over the first 2 years, and corporate income tax reduced to half from the third to the fifth year.

Key software enterprises identified in the national planning are eligible to have a reduced tax rate of 10% provided that they did not enjoy the above-mentioned preferential taxation policies.

6) October 2000, Former Ministry of Information Industry, Ministry of Education, Ministry of Science and Technology and State Administration of Taxation jointly issued *Notice concerning Issuing Measures for Software Enterprise Verification and Administration (Trial)*.

The "*Measures for Software Enterprise Verification and Administration (Trial)*" was formulated based on the State Council's "*Policies for Promoting Development of Software Industry and Integrated Circuit Industry*". The Notice specifies that the administrative authorities on the province, autonomous region and municipality levels are responsible for the verification of the software enterprises within their administrative areas. The Measures clarify

- a) the competency and responsibilities of such agencies for software enterprise verification, and
- b) criteria of verification, as well as materials and process required for the same purpose.

## **2.5 Venues of the game-play**

1) July 2008, Ministry of Culture, State Administration for Industry and Commerce, Ministry of Public Security jointly issued *Notice concerning Administration of Internet Cafes*.

The Notice raised requests to local law enforcement divisions regarding the administration of Internet cafes including: 1) strengthening law enforcement; 2) encouraging chain store operation of Internet cafes; 3) improving macro adjustment over the sector; 4) improving the legal system for the sector; and 5) deepening the administration of Internet cafes pursuing long-term effect.

2) February 2007, Ministry of Culture, People's Bank of China, jointly with another 14 state

ministries issued *Notice concerning Further Strengthening Administration of Internet Cafes and Online Games*.

The Notice requires strengthened law enforcement and inspection on Internet cafes. Administration of online games shall be increased so that a system to prevent, intervene, and control online game addiction can be created.

3) February 2004, Ministry of Culture, General Administration for Industry and Commerce, Ministry of Public Security, Former Ministry of Information Industry, Ministry of Education, Ministry of Finance, Legislative Affairs Office of the State Council, CPC Office for Civilisation jointly with Communist Youth League issued *Suggestions on Regulating Venue Management such as Internet Cafes Providing Internet Service*.

The Suggestions stress the protection of minors' legitimate rights, and put forward measures to crack down illegal acts in the provision of Internet service.

4) September 2002, State Council's *Sector Provisions on Administration of venue Providing Internet Service* (Order of State Council No. 363)

The Provisions are around

- a) strengthening administration of venues providing Internet service; and
- b) regulating establishment of venues providing Internet service, as well as the conduct in the management of such venues.

5) June 2000, Ministry of Culture, former State Economic and Trade Commission, Ministry of Public Security, Former Ministry of Information Industry, former Ministry of Foreign Trade and Economic Cooperation, General Administration for Industry and Commerce jointly issued *Suggestions on Implementation of Sector Regulation for venues providing Electronic Games*.

The Suggestions are around strengthening supervision and administration of venue for electronic games. Venue operators shall strictly abide by the rules and regulations on venue management. The Suggestions list requirements for the establishment of venue for operation; and clarify legal liability of any of such venue's operators.

## Chapter two: Government Supervision

### 1. Main supervisors and their roles

Mobile games, mobile online game industry in particular, is one of the sub sectors of the Internet information services, subject to the supervision and administration of the relevant government departments.

Administrative supervisors include the National Copyright Administration (NCA), the State Administration of Press, Publication, Radio, Film and Television (SARFT), (formerly called the General Administration of Press and Publication), as well as the Ministry of Culture and other departments.

The state departments mentioned above, in their respective scope of duties covering specific aspects of Internet information services, exercise their respective administration and supervision over the Internet sector.

#### 1.1 National Copyright Administration

The National Copyright Administration is the agency of the State Council, responsible for the administration of copyright in China. The NCA is China's highest copyright administrative department, also the highest copyright administrative law enforcement agency for implementing the Copyright Laws and regulations, formulating rules, regulations and important administrative measures.

The Administration carries out inspection on the registration of copyright, certifies copyright of foreign work, file contracts related to copyright of foreign work, and permits use of such work. At the same time, it supervises the trading of, and agency service for copyright, and promotes the country's overall development in the field of copyright.

Mobile games, especially Online mobile games, in nature, are the unlimited traffic of computed programmes in the virtual space online. What is under the actual control of game operators is the copyright of the games. Therefore, the regulation on the copyright of games is the core of government supervision.

The following is a brief analysis of the rules and regulations issued by the National Copyright Administration alone, or in association with other ministries and commissions.

1) The "*Administrative Measures for Protection of Internet Copyright*" implemented by the National Administration of Copyright and the former Ministry of Information Industry in May 2005

The Measures clarifies in its Article 1 that the Measures are formulated based on the "Copyright Law of the People's Republic of China", as well as relevant laws and

regulations, in order to strengthen administrative protection for the right of information dissemination on the Internet, and to standardise conducts of administrative law enforcement.

The Measures specifies in detailed the act of infringement upon copyright on the Internet, respectively in terms of jurisdiction, delivery, administrative punishment, and the burden of proof.

Meanwhile, Article 11 of the Measures emphasises that when the copyright is infringed, damnifying also the public interests, but the infringing contents are not removed by the infringer, either when the infringer already knows there is the registered copyright, or when it is notified of the same by the owner of such copyright, the supervising authority shall halt the infringing conducts according to Article 47 of the Copyright Law of the People's Republic of China, and give the following administrative penalties:

- a) confiscate the infringer's illegal proceeds
- b) fine the infringer an amount up to 3 times the illegal proceeds. Where it is difficult to calculate the illegal proceeds, the infringer will be fined up to 100,000 Chinese yuan.

This Article not only examines the infringement upon others' copyright, but also its damnifying of the public interests, which is an embodiment of social responsibilities in legislation.

Item 2 of Article 4 defines the jurisdiction of Internet copyright infringement. Violation of the right of online information dissemination is under the jurisdiction of the copyright administrative departments in the local area where the infringement is conducted. The locations where the infringement is conducted include the location of the Internet server and other equipment for Internet services as specified in Article 2 of the Measures.

## 2) The "*Measures for Computer Software Copyright Registration*" announced by the National Copyright Administration in 2002

Article 2 of the Measures states: "In order to promote the development of China's software industry, and to enhance innovation and competitiveness of China's information industry, the NCA encourages registration of software copyright, and that the NCA shall strengthen protection for the registered software copyright." Meanwhile, Article 3 defines the scope of application which covers copyright registration, licensing and assignment.

According to the Measures, The NCA is the overseeing agency of administration of copyright registration nation-wide. The NCA appoints the Copyright Protection Centre of China (CPCC) to be the software registration agency. Approved by the NCA, the CPCC

can set up local offices.

The Measures also specify the procedures of computer software copyright registration, assignment and revocation.

3) *The Supreme People's Court's Interpretation on Application of Laws for Computer Network Copyright-related Disputes* on 20 November 2006.

The Interpretation further clarifies issues concerning jurisdiction and adducing of evidence.

These rules and regulations and judicial interpretation so far have become the most detailed and practical documents for the infringement upon copyright in China.

## **1.2 The State Administration of Press, Publication, Radio, Film and Television - SARFT, (former General Administration of Press and Publication - GAPP)**

Previously, the GAPP was responsible for a) the planning of the development of Internet and digital publishing; and b) managing and implementing the plan. It was also in charge of the formulation of standards for the Internet and digital publishing industry, approving Online games, inspecting content of the Internet and digital products and their publishing, as well as directing the development of the Online game industry.

In 2013, the First Meeting of the 12<sup>th</sup> National People's Congress approved the plan to combine the functionalities of a number of state departments into one authority, namely the SARFT, which is responsible for the formulation of laws and regulations related to radio and television as well as issues related to their copyright.

The new department also makes regulations and policies that standardise its own conduct, as well as make standard for the industry. It organises the implementation, supervision and inspection for the industry. Regulatory policies for Internet and online gaming industry are likely to have further changes in future.

## **1.3 The Ministry of Culture**

The Ministry of culture is the highest Chinese department for cultural administration, and as a functional department under the State Council. The ministry manages the nation's cultural affairs and arts undertakings.

The Ministry of culture is responsible for the formulation of China's policies for culture and arts, drafting laws and regulations for the sector; and responsible for the approval of literature and art products before online dissemination.

It administrates the licensing of venues that provide Internet service, such as the Internet

cafes, and supervises services related to the online games, not including the pre-online-publishing approval for games.

The ministry makes plans for the development of animation and game industry, and implements the plans. It coordinates the industrial development of animation and games.

The following is a brief analysis of the regulations of the Ministry of culture alone or in combination with other ministries and commissions.

1) Ministry of Culture's *Notice concerning Strengthening Examination on Content of Online games*, issued on May 2004.

In the document, it is stated that online games disseminated on the Internet in the People's Republic of China are subject to the approval of the Ministry of Culture before being put into operation. This has clarified the role and position of the Ministry of culture in terms game supervision.

Article 2 of the Notice explains that the Ministry of Culture shall set up a "Committee" for the examination of imported Internet products to be responsible for the review on the content of imported online games. The "Committee" leads its executive office to implement its functionality.

Article 8 requests that any software plug-ins or updates that lead to the substantial change of content of games need examination and approval by the Ministry of Culture. And Article 7 gives only a brief and rough instruction that when the "Committee" qualifies a product over the first instance of examination, the product can organise the beta testing. The ambiguity of approval standards and the instability of policy are considered to be the major drawbacks of the papers.

2) Approval Policies/Procedure of *the Administrative Examination of Profit-making Companies' Imported Internet Products*, issued by the Ministry of Culture

This document brings the whole administrative authority regarding approvals under the jurisdiction of the Ministry of Culture, leading to a nation-wide structure featuring multi-supervision and multi-approval.

3) In July 2005, the Ministry of Culture and the former Ministry of Information Industry jointly issued *Suggestions on the Development and Administration of Online Games* which express their official attitude toward the online games, covering aspects of a) the industry's status quo and development objectives; b) support for the healthy development of online game industry; and c) the regulating of market activities.

The Suggestions clearly support the development of Chinese online games with the ownership of intellectual property, and point out any illegal conducts damaging the

online games market should be cracked down. In terms of the threshold for entry into the games market, the Suggestions request that any new applicants for profit-making online games business license should have a registered capital of 10 million Chinese yuan or more in addition to meeting the basic statutory requirements.

In the administration of online game import, the Suggestions clarify that games are not allowed to be operated in the country or be used in any online games competitions if they are not approved by the Ministry of Culture, and registered according to the *Administrative Measures for Software Products* by the former Ministry of Information Industry.

Any unauthorised dissemination of imported online games will lead to the punishment to the server and website owners in accordance with the administrative regulations.

4) The *Administrative Measures for Law Enforcement of Culture Market* issued by the Ministry of Culture on 1 July 2006 define the administrative procedure, and the boundary of law enforcement by the Ministry of Culture, covering specifications of agencies, personnel, procedures, supervision, and responsibility of law enforcement. However, the “Measures” have been replaced by the “General Administrative Measure for Law Enforcement of Culture Market” enacted on 1 February 2012.

## **2 . Administrative approval system**

Companies are not requested to obtain approval for business of game developing in China. The business of online game operation however, requires

- a) the *license for Telecommunication and Information Service Business* granted by the administrative authority for communications management (discussed in “Item 7 of 2.3 Chapter one”);
- b) the *License for Online Cultural Business* issued by the administrative authority for cultural affairs (discussed in “Item 6 of 2.3 Chapter one”);
- c) the *Permit of Online Publishing* issued by the administrative authority for press and publication (discussed in “Item 10 of 2.3 Chapter one”);

Individual games, case by case, shall obtain the *Computer Software Copyright Registration Certificate* issued by the National Copyright Administration, before acquiring approval by the 1) authority for news and publishing; and 2) the authority for cultural affairs upon start of operation online.

Besides, game operators, as well as their subsidiaries shall 1) verify the copyright of the imported online games at the NCA, and acquire the “Confirmation of Copyright Contract Registration”; and 2) apply to the SARFT and the Ministry of Culture for examination and approval before the imported games is run in China. (discussed in “Item 3, Item 5 and Item 6 of 2.2 Chapter one”)

Online games are prohibited to be operated in China by foreign companies, joint ventures with foreign stakeholders and companies in cooperation with foreign companies.

Foreign investors shall not control or participate in the operation of online games in China through setting up joint ventures, signing relevant agreements or providing technical support and other indirect means. Nor shall any user registration, user account management, game coupon management be imported into games and game platforms that are under foreign companies' control in order for them to indirectly control or participate in online games in China.

Any violation will lead to the legal handling by the GAPP. Under more serious circumstances, companies will be revoked of their business licenses. (discussed in Item 5 of 2.2 Chapter one)

## Chapter three: Factors affecting the legislation for games

The legislation of the game industry is closely related to the policy for 1) the construction of the country's information infrastructure; 2) network information security; 3) the development of the technology; 4) the technical standardisation.

China's legislation for the online game industry is based on the principle of market orientation. While adapted to the market demand, it is expected to strengthen market supervision, regulate market behaviours, and effectively allocate social resources and broaden profit margin for the market participants through economic leverage and competition.

Considering that online games are the combination of 1) the exploration and utilisation of information resources and 2) the application of information technology, the Chinese legislature focuses on the followings when legislating:

### **1. The relation between the legislation of online game industry and the national plan for informatisation**

As early as in the 1990s, China had formulated "9<sup>th</sup> Five-year Plan", shaping informatisation as a long-term national strategic objective for economic and social development. The key elements of the informatisation system are closely related to the online game industry. Those elements include: 1) exploration and utilisation of information resources; 2) construction of information network; 3) application of information technology; 4) information standards; 5) informatisation of education on technology, and 6) information and online game industry.

The development of online game industry is closely related to that of the country's efforts on informatisation. The development of online game industry also needs to be adapted to the national planning for the development of information technology. The laws and regulations of the online game industry along with their standards are important parts of the legislation for the country's informatisation.

The characteristic business activities and operation model of online games place specific requirements and tasks in terms of policy making and legislative authority. Therefore, the formulation of laws for the online game industry is the government's effort to build a system, from the macro perspective and through legislation,

- 1) to support the development of the industry;
- 2) to transform the game enterprises to be the leading force of the industry's construction under market competition;
- 3) and to form an industrial norm with contribution of the country's netizens.

Such legal framework will follow the general principles of legislation for the country's informatisation, such as the technical neutrality principle, and global integration principle. It is with the objectives of establishing a predictable, non-centralised, and consistent legal environment for business. The purpose is to focus on protecting consumers from fraud, protecting intellectual property rights from being infringed upon, as well as protecting effective competition, personal privacy and information security, while securing effective settlement of disputes.

## **2. The relation between industrial chain and investment direction**

Facing the vast domestic market, China's online game industry has the potential to extend its industrial chain. With the segmentation of the market more and more detailed, policies aiming at restructuring sectors of the industry and directing investment have become more important in order to avoid vicious competition. These policies are also meant to solve problems in the market where there is a crowd of participants producing limited number of products.

## **3. The relation between value orientation and growth of consumer market**

In China, the game industry is considered as a branch of cultural and creativity industry. The development of the game industry is often accompanied by the dissemination and penetration of culture.

Taking the multiple effects of the game industry into consideration, China focuses first on the development of the industry. When discussing about the online games, an unavoidable problem is teenagers' addiction to games, leading to considerable harm to their mental development and financial loss. It remains the focus of policy makers as to how to foster a healthy market.

## **4. Relation between fairness and the balance of interests**

Through research into the development and operation of a great deal of online games, the Chinese legislature has found when contracts are signed with unfavourable conditions to either party between a game developer and publisher, the unfavourable consequence is usually passed on to consumers. In the service contracts for consumers, the users are completely at a disadvantageous position. Many players are not able to protect themselves when their interest is harmed.

Same as the unfairness in the game agency contracts, consumers do not have any rights for decision making. As a matter of fact, game players looking for joy from game playing have to bear annoyance and frustration.

To protect the consumer is to protect the game market, the protection of the consumer's rights is to help the games market to survive. While securing fairness, the legislature also pays great attention to how to balance the interests of various legal subjects by means of legislation.

## Chapter four: Effective prevention of legal risks

China has no specific legal provisions for mobile games. However, this does not mean no laws are available for mobile game operation to abide by. As a matter of fact, Chinese laws for online games are applicable for mobile games.

It is explained in Article 2 of the *Interim Measures for Administration of Online Games* issued in June 2010 that the “online games” in the Measures refer to games and service comprised of software programmes and data information, and provided on the Internet and mobile Internet.

The Ministry of Culture’s *Guidance on Implementation of ‘Interim Measures for Administration of Online Games’* issued in July 2010 defines “online games” as Internet games run on computers, internet browsers and other terminal devices as well as stand-alone games provided to the public on internet. It further explains that “other terminal devices” refer to mobile phones, personal digital processors, consoles and other digital devices able to access the Internet, and that “online games” include games and service provided to users through mobile network and received on mobile phones.

As explained above, mobile games are regarded as online games. Therefore, relevant policies, laws and regulations for the online games, unless otherwise specified, shall be strictly observed by mobile game operators.

According to the country’s policy and legal guidelines for the development of the game industry, game operators’ conduct is adjusted by civil law, criminal law and administrative law. Specifically, civil law covers 1) matters such as infringement upon intellectual property including copyrights, trademarks and patents; 2) as well as common civil disputes including agency cooperation, sales and marketing, and user service.

In the criminal aspect, when the violation of intellectual property has reached the standard of conviction and penalty, the infringer shall bear the criminal liability.

The scope of administrative adjustments has been covered in the previous chapters. China's local practice stipulates that the game companies must obtain approval and qualifications from the authorities, apart from the basic criteria specified in the “Incorporation Law”. Any dodging of procedures will be subject to administrative penalties. Game operators may face legal risks including:

### **1. Civil legal risks, including intellectual property protection and common civil disputations**

#### **1.1 Copyright**

1) Elements protected by copyright in a game

“Copyright in games”, according to the Copyright Law, is required to be integral. Game operators need to attach importance to various elements of a game, including name, type of game, characters, music, plots, scenes, equipment etc, and investigate into similarities of source code to other games to avoid being sued.

The elements covered above belong to the protection of the Copyright Law. Therefore, a game identical with or similar to another, in terms of any of the said elements, may constitute copyright infringement. Games as a product are not simply combination of codes, instead, the words, images, music etc in a game may be copyrighted in their own strands, hence shall be protected by the Copyright Law.

According to the provisions of the Copyright Law, without the permission of the copyright owner, any copying, publishing and the online dissemination of a game’s content may be regarded as infringement upon intellectual property rights.

The Copyright Law protects the means of expression of the work, but does not protect the rules of game-play. In spite of that, infringement upon intellectual property rights is very likely to be constituted by the highly similar setting of plots, scenes, and creative elements which contribute, to a certain degree, to such rules of game-play.

In addition, copyright shall also be screened for the use of any virtual characters, while permission shall be obtained when using any real persons’ portrait in order to avoid violating their portrait rights.

In summary, it is prohibited to use words, images, and music, the copyright of which is owned by others, while elements of plots of other games can only be made use of to a proper degree, instead of being copied.

## 2) Legal risks in game adaptation

In order to obtaining the right to adapt the original work, a game company needs to review on the author’s scope of rights. Developers develop games using elements in TV series, movies, novels etc., which is regarded as adaptation of original work. Authors’ licensing for adaptation comes in forms of

- 1) exclusive,
- 2) sole, and
- 3) non-exclusive.

To identify whether the licensor is the actual author of the work, the “author’s signature” and the “Copyright Registration Certificate” can both be helpful. In the meantime, the licensee should be sure whether the author has already licensed the adaptation rights to other parties. This is because in practice, some authors and the websites that publish their work are in contract where it is agreed by both parties that the websites have the copyright of the work and any right derived thereof. Consequently, the authors do not

have the power to further license the rights to any other parties.

When sub-licensing from a licensee of adaptation rights of a work, the sub-licensee should examine the entire chain of licensing, including:

- 1) whether the former licensee is exclusive;
- 2) whether the original contract bearing the author's signature is available; and
- 3) whether the previous licensing is still valid. In whatever way to acquire the license, efforts are recommended to be made on an exclusive licensing, so as to avoid multi-authorisations leading to the legitimate rights of the sub-licensee unable to be fully guaranteed.

## **1.2 Trademark**

When naming the games and characters, props of the games, games companies should pay attention to the existence of trademarks already registered by others.

According to the Trademark Law, application for trademarks shall be rejected provided that the trademark in question is identical with or similar to an existing trademark that already has been registered by others in the same classes. When the name of a game is already in use by another game, although not registered as trademark, it still poses risks for another game to use. Therefore, it is not recommended to use such risky name for your game.

If this name indeed is needed as the title of your game, it should bear significant distinction from its counterpart, and a speedy filing of registration for the mark should be carried out so as to reduce any legal risks, as when the trademark is registered, you are not liable to any of such potential copyright infringement upon intellectual property rights.

In addition to the name of a game, the characters, main chapters, menu, content etc of a game are not allowed to be used once they are registered as trademark. Therefore, screening for trademark registration in the said aspects is essential.

For example, when human names such as "Yang Guo", "Guo Jing", "Zhang Wuji", and "Huang Rong" from Mr Louis Cha's famous novels are used without reference to the plots, classical actors' lines as in such novels, it generally is not considered as infringement upon the copyright of the novels. On the contrary, if the story lines are identical with or similar to those of the novels' without Louis Cha's authorisation, it would be deemed to be copyright infringement by adaption.

Different from copyright, the protection of trademarks is limited to the regions where the marks are registered. Therefore, investigation of the trademarks for new games is important.

## **1.3 Patent**

In addition to trademarks and copyright, patents can be applied for source code of games,

too. Without patent application, source code is deemed to be commercial secrets. At present, the Chinese make adjudication of infringement upon intellectual property rights of computer software based on the principle of "Contact + Substantive similarity", that is:

- 1) whether or not the infringer has contacted the software, the copyright of which belongs to another person or organisation;
- 2) and whether or not there is substantive similarity in the alleged infringement.

"Contact" is not a necessary condition for infringement, as long as the "Substantive similarity" is confirmed to be existing. Considering the uniqueness of computer software, the judicial practice often adopts the combination of 3 methods to compare similarity in software structure, functionalities, source code, documents and tool names:

- 1) the "Line by line comparison";
- 2) the "General sense/feeling comparison (a comparison of the overall styles, characteristics, and sensation the games bring to the users)";
- 3) the "Input and out similarity comparison"

Source code is also considered as corporate business secrets. In order to prevent source code leakage, the employers need to sign confidentiality agreement with staff to agree that when under employment, or within 6 months after a staff leaves his employer, all intellectual property belongs to the employer. Also, legal consequences should be made clear with the staff in case the agreement was breached. That is in order to prevent source code leaks to the staff's new employers.

In a number of puzzle games, page switching and score calculation are all patentable. Hence, any unauthorised use of such features is considered as infringing upon patent rights. Unlike copyright, the protection of the patent is also regional. For a company, an early warning mechanism for patent in China is necessary.

#### **1.4 Game development and publishing**

Game operators are faced with various legal issues concerning game development and publishing. Games operation concerns cooperation between various organisations for game developing, publishing, marketing and financial settlement.

##### **1) Copyright problems in game development and publishing**

An appropriate contract with other parties may guarantee the maximum profit. Usually when a game is introduced, it has a developer and a publisher (also known as "agency" in China). The developer is the code programmer, the designer and author of the game. The publisher is responsible for introducing the game to the market upon its completion.

When the game developer and publisher are two different companies, they are in charge of their own scope of business in order to work efficiently. With regard to the protection of copyright, and in protection of the interest of the developer, both sides should agree on four major points:

- a) The copyright ownership belongs to the game developer. The ownership also covers all versions of the game (beta, initial, and updated versions).
- b) The ownership of copyright of new characters, and props after publishing can either belong to both the developer and the publisher when those updates are made through joint efforts by both parties, or to the developer itself provided that it carried out the updates with its own efforts. In the latter case, the publisher can use the updates for a period of time determined through negotiation with the developer.
- c) When the developer decides to transfer the derivatives of the game to any third party, the publisher should be invited into negotiation to decide profit share.
- d) It is prohibited that the publisher organises any redevelopment or reverse engineering. Any violation of this condition must lead to large-amount default compensation in order to protect the long-term rights of the developer.

Nevertheless, in protection of the game publisher's interest, the conditions in the above-mentioned areas will be made in favour of its own.

## 2) Legal risks in profit share and settlement between the developer and the publisher

In addition to copyright, the developer and the publisher should have clear agreement on issues regarding settlement.

First, the base for profit share calculation should be specified. The base refers to the revenue of the game (payment by users). Profit share calculation based on gross profit is more effective than net revenue in terms of avoiding disputes. The reason of this is that the payment by distribution platforms to publishers is always accompanied by legitimate and effective vouchers or receipts, which can support the developer to monitor and double check the financial figures. On the contrary, calculation based on net revenue cannot serve the same purpose.

Second, it should be made clear that the developer has the right to monitor the sales revenue. In the contract, it can be specified that

- a) the publisher shall update the developer with the monthly sales income along with the official record with the company's stamp;
- b) the publisher should provide the developer with access to the backstage of the game operation's data analysis system (including but not limited to the Android, iOS, and HTML5). In case the developer had concern over the data shared by the publisher, the latter has the obligation to provide reasonable explanation.

Third, the developer and the publisher should have a clear procedure for settlement. In general, the distribution platforms submit a report of sales revenue to the publisher for the latter to produce a settlement report for the developer to confirm. In the contract between the developer and the publisher, it should be stated clearly that:

- a) the report for the month's settlement should be submitted on a specific date,

- such as 25th of the next month;
- b) the developer has the right to generate a settlement report on its own based on the data acquired from the backstage of data analysis system shared by the publisher, given that the report does not come available from the publisher's side on due date, and that this report provided by the developer should be deemed effective if it is not confirmed by the publisher within 3 days.

Fourth, dispute solution. In the agreement between the game developer and the publisher, it should be clarified that

- a) for the undisputed part of the income, the publisher has the obligation to pay as scheduled;
- b) for the part of settlement in dispute, the publisher shall provide income record acquired from the distribution platforms for reconciliation. Late submission (3 days for instance) will mean the publisher has recognised the developer's claim over the disputed part of financial settlement.

### **1.5 Confidentiality of user personal information**

First, game operators should follow the key principles of legality, justifiability and necessity.

It is stipulated in the National People's Congress's *Decision on Strengthening the Protection of Network Information* that when collecting users' personal information, game operators should follow key principles to keep the data confidential, as games operation is a type of interaction between Internet companies.

Second, users should be clearly notified of the collection of their personal information, and their permission should be obtained before collection is carried out.

1) According to the Ministry of Industry and Information Technology's *Provisions on Protection of Personal Information Collected through Telecommunication and Internet*, companies running Internet business cannot collect, nor make use of users' personal information without users' permission. It also stipulates that when collecting personal information from users, the Internet companies should clearly notify them of the purpose, means and scope of the collection and usage of their personal information, and that any conducts such as deceiving, misleading or forcing etc. for the purpose of data collection and use is in violation of laws and administrative regulations, hence are strictly prohibited.

2) *General Principle of the Civil Law* stipulates that the right to privacy is legally protected.

3) The *Consumer Rights Protection Law* also provides that any collection and use of personal information should not violate laws and regulations.

4) The *Women's Rights and Interests Protection Law* provides that women's right of privacy

and other personal rights are under legal protection.

5) The *Protection of Minors Act* provides that no organisations or individuals are allowed to disclose privacy of minors.

As can be seen from the points above, China is paying increasing attention to its citizens' privacy on Internet. While playing games, users' personal information such as account, avatar, age, sex, address and contact information is collected by the game. Game operators have the obligation to keep this information confidential, and they are not allowed to share the information with any third party except governmental departments such as department of public security, procuratorate, and courts, nor can they trade the users' personal information for profit.

## **1.6 Legal Analysis on the sales and pricing issues related to games**

1) Legislation relating to the sales and pricing issues of games

The *Interim Measures for Online Games Administration* explains in its Article 11, that the Ministry of Culture examines the content of the online game products imported from abroad, and that the game operators should submit a) application form; b) specification of game content; c) copyright trading or agency agreement, and the original certificate or the photocopy of the copyright certificate; d) the License for Cultural Business on Internet, and the photocopy of the applicant's the Incorporate Certificate; e) other relevant documents.

The materials listed above are especially needed when the games are meant to charge fees to users. Upon obtaining approval, the game operator shall write the official number of approval on its website or build it in the game.

The Item 1 of Article 20 of the Measures stipulates that the service of any virtual currency in the online games is not open to minors.

Additionally, the Ministry of Industry and Information Technology issued the *Measures for Software Product Administration* which states that the beta version of the software products should be clearly marked and free for download. However, it does not clarify whether services and props of the beta version can be sold for profit. The common practice is it is not illegal when it is not said to be prohibited. At present, only paid download is not allowed.

2) Virtual currency issues in game operation

Online game revenue comes mainly from: a) prepaid hours of game-play; b) equipment and updates; c) game experience and privilege. In order to have better game experience, users can top up their account or buy services at a flat (monthly) rate.

Currently in China, there is no policy even from the National Development and Reform

Commission concerning the pricing of game-related services. Pricing is usually decided jointly by the game developers and publishers.

Nonetheless, the transaction of virtual products shall also abide by laws and regulations. Game operators should not deceive or force consumers into buying their products, instead, they should respect the consumers' right to know, and their right to choose at will. Game operators have the duty to safeguard, from the backstage of the games' management system, the personal information including users' account number, password and so forth, not to mention stealing and using other users' accounts in games.

Top-ups in online games cannot be used for gambling. The *Interim Measures for Online Games Administration* states in its Article 19, that the virtual currency in games is allowed to be changed into nothing but the products or service of the game itself. This is because some games are used as platforms for gambling where users intend to win as much virtual money as they can in order to convert it back into cash to make profit. That constitutes gambling, and is clearly prohibited because it violates the Chinese law.

### 3) Invoicing issues relating to game currency selling

According to Item 2 of Article 22 of the *Administrative Law on Taxation*, the vendors and buyers are obligated respectively to provide and collect invoice during business activities.

Vendors of virtual currency have the obligation to provide invoice. Where the sales and purchase happened online, the vendors should clearly state on the website the billing process including invoicing. This compares to offline sales where the offline vendors, such as newspaper kiosks, are required to provide invoice to the purchaser at the place of the transaction.

But in practice, because there are no clear introductions on invoicing, many game platforms, and agencies including newspaper kiosks do not provide invoice upon selling of the game currency. In that case, the game developers had better decide on the procedure of invoicing with these platforms and agencies in advance, and agree with them that regardless of who issue the invoice, the consumers should be informed how to acquire the invoice. That is in order to avoid punishment by the authority once reported by consumers.

### **1.7 Warning to consumers**

The *Interim Measures for Online Games Administration* requests in Article 16 that game operators shall make instruction and warning for users of different kinds of their games' content and functionalities, and place the instruction and warning at significant positions in the game. Due to the difference in levels of psychological endurance capacity of users, the Chinese law stipulates game operators should describe the games to users and warn them

of any potential risks or problems arising from playing the games.

Regarding online games for minors, the *Interim Measures for Online Games Administration* says in its Provision 2 and 3 in Article 16, that online games for minors should not contain any content that might induce minors to imitate conducts either illegal, or in violation of social morality, nor should they have contents such as cruelty or terrorism that could do harm to minors' physical and mental health.

Online game operators shall adopt technical measures to prevent minors from accessing inappropriate games or functions of games, purchasing products and service in the games, and limit minors' time spent on the games and prevent them from addiction. Minors should also be insulated from adult materials. Minors should be reminded when they have reached the time limit of online playing, so as to avoid sudden death due to excessive fatigue. If necessary, the games should be forced to shut down.

Online game operators should strictly comply with the requirements to prevent minors from accessing inappropriate games that could harm their mental health.

Regarding online game playing, GAPP's *Standards for Anti-addiction System Development (Trial)* defines

- a) the first 3 hours as "healthy";
- b) the next 2 hours after the first 3 hours as "fatiguing";
- c) and over 5 hours as "unhealthy".

It further restricts with the Item 1 of Clause 2 of its Article 2, with regard to game scoring, that

- a) users receive game score normally within 3 hours of playing;
- b) score shall be cut to half during the 3<sup>rd</sup> to the 5<sup>th</sup> hour of game playing;
- c) and no score shall be given when the users have been online playing for over 5 hours.

In fact, the same duty of care shall also be performed to protect adults' health by reminding them of excessive game playing online.

However, Article 2 of SARFT's *Notice concerning Implementation of Real-name Authentication for Anti-addiction to Online Games* issued on 25 July 2014 explains that the implementation of the "anti-addiction system" is not a requirement for mobile games due to the existing hardware and technical factors.

## **1.8 Game content and advertising**

Ministry of Culture's Interim Measures for Administration of Online Games (Order of MoC

No. 49), in its Article 9, prohibits content in online games that

- 1) opposes the fundamental principles determined in the Constitution;
- 2) endangers the unity, sovereignty or territorial integrity of the nation;
- 3) divulges State secrets, endangers national security, or damages the dignity or interests of the nation;
- 4) incites ethnic hatred or racial discrimination or undermines national solidarity, or infringes upon national customs and habits;
- 5) propagates evil cults or superstition;
- 6) disseminates rumours, disrupts social order or undermines social stability;
- 7) propagates obscenity, pornography, gambling, violence or instigates crimes;
- 8) insults or slanders others, or otherwise infringes upon the legitimate rights of others;
- 9) endangers social morality or national splendid cultural traditions;
- 10) is otherwise prohibited by the laws, or administrative regulations of the State.

In addition, the *Measures for Software Product Administration* requests in its Article 4 that development, manufacturing, sales, import and export of software products should comply with Chinese laws and regulations, prohibiting content in software that

- 1) infringes upon intellectual property rights of others;
- 2) contains computer virus;
- 3) may threaten safety of computer systems;
- 4) is not in line with the Chinese standards and norms for software;
- 5) is otherwise prohibited by the laws, or administrative regulations of the State.

Furthermore, Article 15 of the *Measures for Internet Information Service Administration* stipulates that Internet information service providers shall not produce, duplicate, publish or disseminate any contents that

- 1) oppose the fundamental principles determined in the Constitution;
- 2) endanger national security, divulge state secrets, subvert state power, destroy national unity;
- 3) damage national honour and interests;
- 4) incite ethnic hatred or racial discrimination or undermine national solidarity;
- 5) damage national policy on religious issues, propagate evil cults or superstition;
- 6) disseminate rumours, disrupt social order or undermine social stability;
- 7) propagate obscenity, pornography, gambling, violence or instigate crimes;

- 8) insults or slanders others, or otherwise infringes upon the legitimate rights of others;
- 9) is otherwise prohibited by the laws, or administrative regulations of the State.

When designing advertisement of a game, either with the publisher's own efforts or with that of an advertising agency, it has to be assured that the advertisement is not a copy of another similar advertisement, the legal right of which is owned by others.

In practice, game operators usually commission advertising agencies for the design and production of the advertisement for games. The advertising agencies however, would sometimes borrow contents from other existing work with the intention to make their advertisement more popular. Consequently, this increases the legal risks of the game operators. In the event that no contractual obligation with regard to such risk is specified with the advertising agency, the game operator usually bears joint liability.

Therefore, it is recommended that game operators should clarify in the contract with the advertising agency that no infringement upon other advertisements' intellectual property should ever be conducted by copying others' work and service, and that the advertising agency should bear all liability in case of such infringement.

In addition to the infringement upon intellectual property, advertisements should be free of false advertising and unfair competition. The *Advertisement Law* also provides that none of the conduct listed below is allowed:

- a) use of Chinese national flag, national emblem, and National Anthem of the People's Republic of China;
- b) use of names of any state departments as well as their personnel;
- c) use of titles such as "national", "supreme", "the best" etc.;
- d) harm to the social stability, safety of individuals' life and possession or public interests;
- e) disturbance of social peace or deviation from good morals;
- f) obscene, superstitious, terror, violent, and evil content;
- g) racial, religious and gender discrimination;
- h) harm to the environment and natural resources protection

It is the game operator's duty to always keep an eye on any of such legal risks. In case any provisions are violated, the game operator shall bear joint liability with the advertising agency. Therefore, in order to reduce legal risks, the game operator should clarify with the advertising agency that any legal risks should be borne by the latter in case of any misconduct in the game advertising.

## **1.9 Jurisdiction**

Article 20 and 25 in the latest *Judicial Interpretation of Civil Procedure Law* states where the sales and purchase contract is signed online, and the object is delivered online, the buyer's place of residence is the area of jurisdiction, unless the object is delivered in other ways or

the jurisdiction is otherwise agreed in the contract. In case of tort, it is applicable to resort to the jurisdiction of the consumers' residence instead of that of the infringers' where the tort is conducted by the infringer and where there is the equipment including computers using which the infringement is implemented.

The above regulations are intended to better protect the consumers' right by facilitating their civil proceeding. On the contrary, it increases the cost of the online game operators when they face any legal charges. Faced with such situation, online game operators are recommended to have the agreement of the users that in case of any disputes, the court in the game operators' local areas should have the jurisdiction. This can minimise the cost of the game operators because it is the users who need to travel for the legal proceeding.

## **2. Criminal offenses**

Game companies might also be involved in criminal cases mainly arising from infringement upon intellectual property right. The *Criminal Law* says in its Article 30 that organisations shall bear criminal liability provided that they have harmed the society. In Article 31, The *Criminal Law* demands when found guilty of any crimes, organisations should be punished a fine, while their managing staff with direct responsibilities should be sentenced unless the specific provisions of the law, or other laws have different or additional provisions.

From that it is understood that the managing staff with direct responsibility of the crime should bear criminal liability. In practice, the legal persons should be sentenced given that they have direct participation in the criminal case, or that they did not stop the criminal conduct provided that they knew such crime was being committed. However, if the legal persons can provide evidence that they did not participate or they were not aware of the criminal conduct, they could be exempted from criminal liability.

The game companies may also commit the crime of copyright infringement. The *Criminal Law* in its Article 217 clarifies a maximum 3 year imprisonment or detention along with a fine, or a fine alone can be imposed as penalty, provided that the criminals copy the written work, music, movies, TV series, video work, software and other forms of work without the permission of the copyright owner, which leads to large amount of illegal proceeds or other serious consequences. The worst of the infringement is to copy the source code of other software.

## **3. Administrative liabilities**

Game companies may be exposed to administrative legal risks coming from

- 1) the pre-licensing examinations,
- 2) the paying of tax, and
- 3) the infringement up intellectual property right. As previously introduced, game companies should acquire the License for Telecommunication and Information Service Business; the License for Online Cultural Business, and the Permit of Online Publishing.

Moreover, when providing information or publishing announcements, game companies shall apply to the sector authorities case by case as required by the *Provisions for Internet Digital Bulletin Service Administration*.

Imported games should obtain the approval of the administrative authority for news and publishing, and the authority for cultural affairs. Companies as well as their subsidiaries should verify the copyright of the imported online games to the sector authority before imported games can be introduced to market for sales.

The *Law on Administrative Penalty* clarifies the types of penalties: 1) warning; 2) fine; 3) confiscation of illegal income and property, 4) suspension of business and production; 5) withholding or revoking of business license; 6) detention; 7) other penalties. In the event of missing administrative permits, companies will face the punishment by the sector administrative authorities.

In addition, if companies fail to pay tax, they may face the penalty by tax authorities. As is defined in the Article 63 of the *Law on the Administration of Tax Collection*, tax evasion is constituted when tax payers forge, alter, conceal or destroy the accounting books and vouchers for the account; or overstate the expense or understate the revenue; refuse to declare tax; or refuse to pay or pay less than the required tax payable. The tax authorities shall pursue the payment of the unpaid or underpaid taxes, plus the overdue payment and impose a fine worthy of 50%-500% of the unpaid or underpaid amount. When a criminal offense is constituted, the criminal shall bear the criminal liability.

Moreover, If the game companies infringe others' intellectual property rights, they may receive punishment by administrative departments based on the Article 48 in the *Copyright Law*, Article 60 and 61 in the *Trademark Law*, and Article 64 of the *Intellectual Property Law*.

#### **4. Risks of foreign investment in games**

Based on the Provision 4 of the *Notice concerning Further Strengthening Pre-license Examination and Administration of the Approval of Imported Games*, online games are prohibited to be operated in China by foreign companies, joint ventures with foreign stakeholders and companies in cooperation with foreign companies. Foreign investors shall not pursue control over or participate in the operation of online games in China by setting up joint ventures, signing relevant agreements or providing technical support or any other indirect means. Nor shall any user registration, user account management, game coupon management be imported into games and game platforms that are under foreign companies' control in order for them to indirectly control or participate in online games in China.

Any violation of the aforesaid regulation shall lead to the legal punishment by the GAPP (replaced by SARFT). Under more serious circumstances, companies shall be revoked of their licenses. It is clear that foreign companies and foreigners cannot set up game companies in China, nor can they operate, or participate in the operation of games, operate top-up,

purchase and access game platforms by partnership with Chinese companies.

According to the *Regulations on the Administration of Foreign Investment in Telecommunications*, foreign investors can have no more than 50% of the share in any joint ventures for telecommunication. This is to ensure that the Chinese investors have the dominance in the enterprise. Usually foreign investors cannot participate in game operation.

But there are also ways to walk round the prohibition by special means. Foreign investors pursuing control over or participate in the game operation in China can first set up a company in China before signing a cooperation contract with other Chinese companies. A typical example is when Blizzard and Netease Cayman Company set up a joint venture in Hong Kong, which was meant to provide services only of anti-hacking, anti-plug-in, anti-private server and other technical support, Blizzard has eventually had the actual control over game operation through a series of cooperation with Chinese partners including Shanghai NTES.

To summarise, foreign enterprises' attempt to be a game operator in China is risky. However, contractual provisions may help avoid the risks and achieve the purpose of being able to operate games in China.